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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN MARRIAGE MINISTRIES,)	Opposition No. 91237315
)	
Opposer,)	Mark: GET ORDAINED
)	Application No. 87430729
v.)	
)	
UNIVERSAL LIFE CHURCH)	
MONASTERY STOREHOUSE, INC.)	
)	
Applicant.)	
_____)	

**TRIAL BRIEF FOR OPPOSER
AMERICAN MARRIAGE MINISTRIES**

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I. INTRODUCTION

Applicant, self-identified as the Universal Life Church Monastery Storehouse (“Applicant”), seeks to trademark, through USPTO Application No. 87430729, a ubiquitous and descriptive phrase in the online ordination industry: “get ordained.” This phrase is used by numerous providers of ordination services to invite consumers to obtain identical services to those for which Applicant claims exclusive use of the phrase: the service of getting ordained. The phrase is also used and understood by members of the public, the media, and prospective and actual consumers of ordination services to mean exactly what the plain language definition of the words entail generically: “obtain ordination credentials.” Applicant cannot be permitted to monopolize a generic and natural language way of offering and speaking about ordination services.

II. STATEMENT OF THE TRIAL RECORD

The trial evidence in these proceedings consists of the following testimony and exhibits submitted by the parties between September 2020 and July 2021.

Opposer, American Marriage Ministries (“Opposer” or “AMM”), submitted AMM NOR Exhibits A-H and L-Y through its Notices of Reliance. 39 TTABVUE; 40 TTABVUE; 41 TTABVUE; 43 TTABVUE; 44 TTABVUE; 78 TTABVUE. (An Exhibit Cross-Reference is available at 78 TTABVUE 6-8.) AMM additionally submitted trial testimony and exhibits from the following individuals:

- (1) Dylan Wall (and Wall Exhibits 1-25), via deposition on September 4, 2020 (69 TTABVUE 1-279);
- (2) Glen Yoshioka (and Yoshioka Exhibits 26-46), via deposition on September 10, 2020 (74 TTABVUE 1-249);
- (3) Lewis King (and King Exhibits 47-49 and Exhibits 100-103), via deposition on September 11, 2020 (73 TTABVUE 1-148) and via deposition on January 29, 2021 (83 TTABVUE 1-56);

- (4) Brian Wozeniak, via deposition on September 10, 2020 (70 TTABVUE 1-47);
- (5) Dallas Goschie (and Goschie Deposition Exhibits A-K), via deposition on September 9, 2020 (72 TTABVUE 1-135); and
- (6) George Freeman (and Freeman Deposition Exhibits O-W), via deposition on September 11, 2020 (71 TTABVUE 1-118).

Applicant submitted ULC NOR Exhibits A-J through a Notice of Reliance. 66 TTABVUE. Applicant additionally submitted trial testimony and exhibits from the following individuals:

- (1) George Freeman (and Freeman Declaration Exhibits A-B), via declaration dated December 15, 2020 (62 TTABVUE 1-9), and subject to cross-examination via deposition on January 12, 2021 (86 TTABVUE 1-66);
- (2) Dallas Goschie (and Goschie Declaration Exhibits A-B), via declaration dated December 15, 2020 (65 TTABVUE 1-11), and subject to cross-examination via deposition on January 11, 2021 (85 TTABVUE 1-42); and
- (3) Brian Wozeniak (and Wozeniak Declaration Exhibits A-H), via declaration dated December 15, 2020 (redacted version at 64 TTABVUE 1-25; unredacted version at 63 TTABVUE), and subject to cross-examination via deposition on January 11, 2021 (redacted version at 84 TTABVUE 1-63, unredacted version at 82 TTABVUE).

III. STATEMENT OF FACTS

A. Definitions of the component parts of GET ORDAINED

There is little substantive dispute about what the word “ordain” means. Merriam Webster Dictionary’s first definition of “ordain” is “to invest . . . officially (as by the laying on of hands) with ministerial or priestly authority.” 40 TTABVUE 4. Dictionary.com similarly provides, as its first definition of “ordain,” “to invest with ministerial or sacerdotal functions; confer holy orders upon.” 66 TTABVUE 22. American Heritage Dictionary echoes these definitions with its principal definition as follows: “to invest with ministerial or priestly authority; confer holy orders upon” and, alternatively, “to authorize as a rabbi.” 79 TTABVUE 28. *See also* 73 TTABVUE 10:2-13 (King: “to ordain someone means to provide them with an ordination, which

is a pact between . . . an organization and an individual that empowers them with the ability to perform certain functions on behalf of and in the name of the organization”). Merriam Webster provides a classic—and relevant—example of popular, proper use of the word “ordain” in that definitional context: “*was ordained* as a priest.” In sum, under the primary definition of the word “ordain,” an individual who *becomes ordained* becomes a person invested with ministerial or priestly authority.

The word “get” also has a clear, obvious, and indisputable meaning. Both parties submitted into evidence the Merriam Webster definitions of the word, consisting of various iterations of the definition “to obtain.” 40 TTABVUE 3; 66 TTABVUE 9-10 (e.g., “to seek out and obtain”); *see also* 79 TTABVUE 27 (American Heritage Dictionary definitions of “get” including “to obtain or come into possession of” and “to go after and obtain”); 86 TTABVUE 27:14-16 (Freeman: defining “get” as “receive or obtain”).

Combined, then, the words “get” and “ordain” mean “obtain ministerial or priestly authority.” *See also* 74 TTABVUE 16:11-20 (Yoshioka: “Get ordained means the act of seeking to have – seeking to receive a title or authority within a religious institution to be able to perform religious rights of that institution When someone gets ordained, basically, they’re seeking to become an official of a religious institution.”); 69 TTABVUE 24:20-23 (Wall: “I understand [the phrase ‘get ordained’] to mean the act of – simply the act of getting ordained as a minister.”); 73 TTABVUE 10:21-24 (King: “‘Get ordained’ is a verbal phrase. It’s descriptive of the act of ordination, which is a compact between an organization and an individual that empowers or allows that individual to undertake acts on behalf of and in the name of that organization.”). Put another way, the phrase means “obtain ministerial credentials” or, more simply, “become a minister.”

How does one obtain ministerial or priestly authority? This answer too is indisputable: through a process called ordination. *See, e.g.*, 73 TTABVUE 10:2-13, 36:3-13; 86 TTABVUE 24:17-25:9. Ordination is not tied to any one particular religion, organization, or provider of services; a person can “become ordained”—or “get ordained”—through any number of different organizations. 73 TTABVUE 36:3-13; 74 TTABVUE 16:22-25, 17:4-8, 17:10-16; 69 TTABVUE 25:3-7, 29:5-10, 29:22-30:17; 71 TTABVUE 18:9-14. Traditionally, one obtains ministerial (or priestly or rabbinical) authority through a church or other religious organization, which may perform a special ceremony to reflect the conferral of ministerial authority upon the individual. *See* 73 TTABVUE 36:3-13 (King: identifying various religious organizations that offer ordination, including churches, synagogues, mosques, and online organizations); 86 TTABVUE 24:17-25:9 (Freeman: discussing the ordination of a Catholic priest). In recent decades, however, automated ordinations have also become available, whereby an individual can become ordained—that is, can obtain ministerial authority and credentials—by submitting an online form with a church or other organization that provides ordination services. 73 TTABVUE 14:4-10, 15:5-13, 16:14-17:5; 70 TTABVUE 13:15-15:2.

Ordained ministers are authorized in most U.S. jurisdictions to legally solemnize marriages. *See, e.g.*, 40 TTABVUE 11-31; 43 TTABVUE 335-46; 73 TTABVUE 20:5-23:11. In fact, “the term ‘ordained minister’ or ‘ordained’ shows up in many states’ wedding laws . . . specifically allowing ordained ministers to solemnize marriage in a certain state.” 73 TTABVUE 28:4-11. *See, e.g.*, RCW 26.04.050 (Washington State statute providing that “any regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any religious organization” is “authorized to solemnize marriages”); *see also* 73 TTABVUE 29:2-6 (King: identifying several specific states that “describe[] ordained ministers as people that are allowed

to officiate weddings”). Some individuals seek to obtain ordination credentials specifically for the purpose of being able to solemnize the marriage of friends or family members. 74 TTABVUE 13:18-14:6; 73 TTABVUE 26:17-22 (King: “most times people who get ordained do so because they want to officiate a wedding ceremony”).

B. The Online Ordination Industry

Substantial evidence shows that an industry has developed to offer automated ordination services, with numerous organizations offering ordination services online. *See* 74 TTABVUE 12:22-13:2; 69 TTABVUE 21:15-22:5; 73 TTABVUE 20:15-21:2. By submitting certain basic information via an online form with one of these organizations, an individual can become ordained. *E.g.*, 73 TTABVUE 14:4-10, 15:5-13, 16:14-17:5 (King: describing the process of ordination with AMM and other ordination providers); 70 TTABVUE 13:15-15:2 (Wozeniak: describing ordinations processed through Applicant’s various websites); 43 TTABVUE 60 (Universal Life Church Seminary webpage regarding web code allowing for automated ordination). After submitting the online form and thereby becoming ordained, the individual can obtain a certificate confirming the fact of his or her ordination for purposes of registering with relevant local authorities, for instance, to demonstrate one’s qualifications to solemnize marriage. 73 TTABVUE 20:15-21:2; 86 TTABVUE 23:18-21. Organizations that provide automated ordination services also frequently sell religious paraphernalia to their ministers, such as minister credentials, religious clothing (e.g., stoles and vestments), and books and written materials (e.g., about how to perform certain religious ceremonies). 69 TTABVUE 22:17-23; 73 TTABVUE 20:15-21:2; 71 TTABVUE 16:8-11.

C. The Parties¹

Opposer, American Marriage Ministries (“AMM”), “is a[n] Internet church that provides online ordinations for people that want to perform wedding ceremonies for friends and family members.” 73 TTABVUE 9:19-23; 69 TTABVUE 20:10-20. AMM has provided automated online ordination services since 2009. 73 TTABVUE 95:4-7.

Applicant has provided automated online ordination services through various websites since approximately 2006. 70 TTABVUE 9:23-11:7 (Wozeniak: individuals can receive ordination services through various websites operated by Applicant). Applicant currently operates a website with the domain name GetOrdained.org, through which it offers ordination services and sells various products. 64 TTABVUE 3, ¶ 8-10. Prior to 2014, visitors to the

¹ USPTO Application No. 87430729 identifies “Universal Life Church Monastery Storehouse, Inc.” as the owner of GET ORDAINED. 39 TTABVUE 16, 27. However, the Universal Life Church Monastery Storehouse responding as “Applicant” in this proceeding is not named “Universal Life Church Monastery Storehouse, Inc.” 72 TTABVUE 9:14-23. In fact, to the knowledge of Applicant’s employees, no entity named “Universal Life Church Monastery Storehouse, Inc.” exists. 72 TTABVUE 10:9-16. It is Applicant—not the Universal Life Church Monastery Storehouse, Inc.—which purports to own and claim GET ORDAINED. *See, e.g.*, 62 TTABVUE 3-4; 65 TTABVUE 2-3.

Thus, based on the record, USPTO Application No. 87430729 must be denied because it was not filed on behalf of the owner of the claimed mark. 37 C.F.R. § 2.71(d) (“An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.”); *see also Chien Ming Huang v. Tzu Wei Chen Food Co.*, 849 F.2d 1458, 1460, 7 U.S.P.Q.2d 1335 (Fed. Cir. 1988).

The difference between Applicant’s name and the mark owner’s name stated in the Application is significant, legally and to the public. Under Washington law, a nonprofit corporation cannot include “Inc.” in its name. RCW 23.95.305. Inclusion of “Inc.” on the Application—even if such inclusion was a mistake—amounts to a material misrepresentation of Applicant’s corporate form that deceives the public about whether a nonprofit or for-profit entity owns the claimed mark. Besides, even if inclusion of “Inc.” on the Application was a mistake, the question of “whether the PTO record designation of ownership could be corrected, or whether such correction could be effective *nunc pro tunc*” is not before the Board “because there has been no attempt at correction,” despite the fact that AMM previously raised this issue to Applicant. *Chien Ming Huang*, 849 F.2d at 1460.

Though registration must be denied on this basis alone, Opposer nevertheless proceeds through the remainder of this brief to articulate additional bases for denial of the Application.

GetOrdained.org webpage were redirected to another Applicant-operated website in order to be ordained or purchase goods. 84 TTABVUE 22:21-24 (Wozeniak: “Before 2014, when someone was visiting GetOrdained.org, there was no page for them to become a minister on.”); 64 TTABVUE 3, ¶¶ 10-11.

Applicant is one of many organizations carrying the “Universal Life Church” name. 69 TTABVUE 24:12-16 (Wall: noting that the Universal Life Church is a different entity than Applicant); 73 TTABVUE 58:14-16 (King: same). The original Universal Life Church began providing ordination services (including to Applicant’s president and presiding chaplain George Freeman) almost 60 years ago. 73 TTABVUE 80:4-10; 62 TTABVUE 2, ¶¶ 3, 5; *see also Universal Life Church, Inc. v. U.S.*, 13 Cl. Ct. 567, 569-77 (1987) (describing the original Universal Life Church and the proliferation of other congregations bearing the “Universal Life Church” name).

Applicant and Opposer are direct competitors for prospective consumers of ordination services. 83 TTABVUE 9:2-12 (King: identifying Applicant as one of AMM’s competitors); 70 TTABVUE 26:20-27:10 (Wozeniak: AMM is Applicant’s competitor in search results).

D. The Witnesses

Six witnesses testified in this proceeding. Three work for the Opposer, and three for the Applicant.

Lewis King currently serves as AMM’s Executive Director, and has served in that role for approximately two years. 73 TTABVUE 9:3-9. He has personally been ordained by several organizations. 73 TTABVUE 15:21-16:6, 19:11-23. He also has had substantial interaction with individuals interested in obtaining ordination services or who have already obtained such services, whether from AMM or from other ordination providers. 73 TTABVUE 15:21-16:6, 19:11-23, 21:15-23:24.

King “follow[s] very closely the developments in marriage law in all the different states” and has “worked with or reached out to a number of lawmakers to help them understand the importance of online-ordained ministers and the role that online-ordained ministers play in their communities.” 73 TTABVUE 29:21-30:3.

King also testified that in his capacity as AMM’s Executive Director, “I frequently and routinely do research of the ordination landscape and see which other organizations are out there and how they’re providing ministries and generally try and get a sense of where American Marriage Ministries fits in the broader ordination industry.” 73 TTABVUE 18:3-8. He testified to gaining such information both through visiting the websites of other ordination providers directly and through reading about them in blogs and in the news. 73 TTABVUE 18:12-24.

Glen Yoshioka has worked in the online ordination industry since 2006. 74 TTABVUE 12:13-20. He currently serves as the president of AMM, and has been in that role since the AMM’s inception in 2009. 74 TTABVUE 11:3-17. Yoshioka has experience working with “vendors, suppliers, wedding vendors, ministers, couples, [and] even on occasion government officials. Basically anyone that would have some sort of connection in some way to online ordinations or performing marriages and everything in between.” 74 TTABVUE 13:6-17.

Yoshioka testified regarding his high degree of awareness of other organizations that offer online ordinations, explaining, “I’ve acquainted myself as well as I can with other people operating in our same industry space . . . , just basically seeing what they’re up to, kind of like what they’re doing, if there’s any innovation going on. Suffice it to say that I’ve spent many, many hours checking out other organizations that offer online ordinations.” 74 TTABVUE 45:5-19. He also personally knows individuals who have been ordained through a variety of different

organizations that offer ordination services, including Open Ministry, Universal Life Church, Church of the Latter Day Dude, and Rose Ministries. 74 TTABVUE 15:9-16:4.

Dylan Wall was first ordained about 20 years ago, and he has worked in the online ordination industry since 2006. 69 TTABVUE 23:21-24:11. He is the former Executive Director of AMM and currently serves on AMM's board as Vice President. 69 TTABVUE 17:15-21, 18:15-17.

Wall presented testimony regarding AMM's efforts, at his direction, to collect and catalog examples of the widespread use of the term "get ordained" in the context of ordination services. 69 TTABVUE 35:4-24. He testified that in the course of this search effort in 2018, he saw hundreds of "examples of use of the term 'get ordained' by other online churches[,] in common conversation within blogs," and in social media posts. 69 TTABVUE 34:9-15, 35:17-19, 36:7, 37:5-9, 37:16-21.

Brian Wozeniak has worked for Applicant since 2014. 70 TTABVUE 9:15-17. He currently serves as Applicant's Chief Technology Officer, and previously worked as a web developer for Applicant. 64 TTABVUE 2, ¶¶ 3-6.

Despite his purported familiarity with Applicant's website operation and online advertising activities, *see* 64 TTABVUE 2, ¶ 7, Wozeniak was unable to recall with any specificity at his trial deposition how many websites Applicant operates; whether and how Applicant uses "get ordained" in its advertising for its various websites; or whether and which, if any, of Applicant's websites redirect to Applicant's GetOrdained.org website. *See generally* 70 TTABVUE; 84 TTABVUE 8:6-19. Yet in his written trial declaration, Wozeniak did offer specifics as to the number of individuals who have been ordained through GetOrdained.org since 2014, the amount spent by Applicant on "advertising the services offered under the GET

ORDAINED trademark through the GetOrdained.org website”, and the number of sales transactions and amount of gross sales through the GetOrdained.org website since 2016. *See generally* 64 TTABVUE.

Dallas Goschie has worked for Applicant since 2013, and currently serves as Applicant’s Operations Manager. 65 TTABVUE 2, ¶¶ 3-4. He testified that he has overheard Applicant’s employees use “get ordained” “to refer to the source or entity providing ecclesiastical services, such as ‘You became a minister through GET ORDAINED, right?’” but he did not present any testimony or evidence that he has heard anyone *not* affiliated with Applicant use “get ordained” to refer to a particular source of ecclesiastical services. 65 TTABVUE 4, ¶ 15. In fact, in response to the question “Do ULCMS’s customers associate the phrase ‘get ordained’ with ULCMS specifically?” he answered, “I don’t know.” 72 TTABVUE 19:12-17. He also was “not sure” whether “the ‘get ordained’ brand ever received third party media recognition.” 72 TTABVUE 20:23-25. Not only was he unaware how Applicant’s use of “get ordained” was perceived, he claimed to be unaware of whether any organizations besides Applicant use the phrase. 72 TTABVUE 28:8-18; 85 TTABVUE 16:3-18.

George Freeman has been the President and Presiding Chaplain of Applicant since it was incorporated in 2006. 62 TTABVUE 2, ¶ 5. He was ordained as a minister by the Universal Life Church—a different entity than Applicant—over 40 years ago. 62 TTABVUE 2, ¶ 3; 79 TTABVUE 13:11-14.

There were striking discrepancies in Freeman’s testimony about core issues in this proceeding. For instance, though he testified in his written trial declaration that “the words ‘get ordained’ do not mean the same thing as the words ‘become a minister’ or ‘certify your ability to conduct weddings,’” his testimony in his discovery deposition reflected the opposite: when asked

whether people understand the phrase “get ordained” to mean “becoming somebody qualified to perform marriage services,” he answered, “If you’re looking to become a minister, yes. I would say those people that are looking to get ordained to become a minister [understand the phrase that way].” 79 TTABVUE 17:25-18:6; *compare to* 62 TTABVUE 4, ¶ 17. Additionally, despite his written testimony that “[t]o ‘get ordained’ . . . is not a service that can be provided by another,” Freeman admitted in his discovery deposition that he “got ordained” through the Universal Life Church. 79 TTABVUE 13:9-14, 14:7.

Freeman struggled to answer basic questions about Applicant’s services, answering some in clear contradiction to other positions taken by Applicant in this proceeding.

86 TTABVUE 13:14-14:7 (Freeman: claiming that ordination services are “not a religious service” and are instead a service like “cleaning the kitchen or toilet, that kind of service”); *see also* 86 TTABVUE 13-24; *but see* 65 TTABVUE 3, ¶ 7 (Goschie: identifying “ordaining ministers to perform religious ceremonies” as an “ecclesiastical service”); 39 TTABVUE 46 (the Application, specifying the same). Additionally, Freeman was unable to answer questions about the meaning of key parts of his declaration. For instance, despite testifying in his declaration about how the phrase “get ordained” is understood when used “in the manner that trademarks are typically used,” 62 TTABVUE 4-5, ¶ 20, when asked on cross-examination about that testimony, he responded that he “did not recall the manner that trademarks are usually used.” 86 TTABVUE 32:6-33:13.

E. The Claimed Mark

On April 28, 2017, Trademark Application No. 87430729 (“the Application”) was filed to register GET ORDAINED on the Principal Register on behalf of the Universal Life Church

Monastery Storehouse, Inc. 39 TTABVUE 45. The Application claimed GET ORDAINED as a word mark—rather than as a design mark—for two classes:

- Class 35: “On-line retail store services featuring clothing in the nature of shirts, hats, and stoles, stationery, business cards, bumper stickers, license plate holders, badges, pens, pins, musical sound recordings, bookmarks, bread, aromatic oil, portfolios, and publications in the nature of books, hand-outs, workbooks, manuals, brochures, and newsletters in the fields of religion, spirituality, marriage, law, and management”; and
- Class 45: “Conducting religious ceremonies; Ecclesiastical services, namely, ordaining ministers to perform religious ceremonies; Providing a website featuring information about religious belief systems.”

39 TTABVUE 46-47.

However, nearly all of Applicant’s evidence in the record supports—at best—use of and entitlement to GET ORDAINED as part of a design mark rather than as a word mark. In support of the Application, Applicant submitted pages from a website it operates in which the phrase “get ordained” appears as part of a design logo as shown below:



39 TTABVUE 53-56. The words “get” and “ordained” appear in stylized font with an image of an open book and the words “Universal Life Church.”

Applicant’s Chief Technology Officer also testified that the “GET ORDAINED trademark” under which Applicant’s services and sales are provided consists of “the logo in the top left currently on the website that says ‘get ordained.’ That image right there that we have on our website” [i.e., the image shown above]. 84 TTABVUE 14:12-22. He acknowledged that that image, containing the words “GET ORDAINED” and “UNIVERSAL LIFE CHURCH” in stylized text, appears in the header and footer of every GetOrdained.org webpage. 84 TTABVUE 27:9-28:25. Applicant’s Operations Manager confirmed that Applicant’s “continuous” and

“prominent” uses of the “‘get ordained’ trademark” across the GetOrdained.org website consist of Applicant’s display of the mark “in the header of every page on the site”—i.e., via a stylized logo featuring an abbreviation of Applicant’s name as part of the logo. 85 TTABVUE 9:3-14; *see also* 65 TTABVUE 6-11 (Goschie Declaration Exhibits A and B, showing use of the above image on webpages from 2014 and 2017).

F. Service providers in the ordination industry use “get ordained” as a call to action rather than as a brand.

Substantial evidence demonstrates that ordination providers besides Applicant routinely use the phrase “get ordained” in the context of ordaining ministers. Many providers use the phrase “get ordained” as a call to action—that is, as a piece of web content intended to induce a viewer to follow a particular instruction. *See* 74 TTABVUE 28:13-20 (Yoshioka: defining “call to action”). Just as some websites include clickable buttons with phrases like “click here,” “buy now,” or “go to shopping cart,” intended to induce a viewer to perform the specified action, so do ordination providers include clickable buttons with the phrase “get ordained” on their websites to induce viewers to obtain the provider’s automated ordination services. 74 TTABVUE 28:15-25.

1. AMM uses “get ordained” for the same goods and services claimed by Applicant.

AMM provides the same services as Applicant. *Compare* 39 TTABVUE 15 (the Application, claiming as a service “ecclesiastical services, namely, ordaining ministers to perform religious ceremonies”) *with* 39 TTABVUE 59 (trademark application for AMM, claiming as a service “ecclesiastical services, namely, ordaining ministers to perform marriage ceremonies through a non-denominational, interfaith church”) (underlining added); *see also* 73 TTABVUE 111:14-16 (King: confirming that “[w]hen someone becomes a minister of AMM, . . . AMM [is] providing an ecclesiastical service”). AMM, like Applicant, also sells goods such

as marriage certificates and ordination credentials. 74 TTABVUE 121:12-17; *compare to* 39 TTABVUE 45 (the Application, claiming mark for “on-line retail store services”). AMM also provides information on its own website about its theological doctrine and about its religious belief systems. 74 TTABVUE 119:2-21; *compare to* 39 TTABVUE 46 (the Application, claiming mark for “providing a website featuring information about religious belief systems”). The phrase “get ordained” appears across AMM’s website, including on the webpages from which AMM offers its ordination services, provides information about its religious belief systems, and sells goods. 74 TTABVUE 122:5-17. In other words, AMM uses “get ordained” with many of the same goods and services claimed by Applicant.

AMM started using “get ordained” on its website in 2009—before Applicant’s claimed first use date. 73 TTABVUE 95:4-7; *see also* 69 TTABVUE 279 (Wall Exhibit 25: showing Wayback Machine capture of theamm.org as it appeared on November 23, 2010); 74 TTABVUE 216 (Yoshioka Exhibit 26: showing recent capture of theamm.org, using “get ordained” in the navigation panel at the top of the page); 43 TTABVUE 47-58 (AMM NOR Exhibit E); *compare to* 39 TTABVUE 46 (the Application, claiming July 10, 2011 as first use date for Class 45).

“Get ordained” is used on AMM’s website as a “call to action,” inviting and instructing web visitors to obtain AMM’s ordination services. 74 TTABVUE 26:21-28:25; 69 TTABVUE 139:120-24; *see also* 69 TTABVUE 139:20-140:9 (Wall: testifying that AMM has used “get ordained” as a call to action since 2009). AMM also uses the term “in our website copy and titles and meta information, meta titles, meta descriptions and calls to action in our marketing. We use it in our key words in Google ads, we use it other advertising venues. It’s so ubiquitous. It’s a core part of an organization especially when it comes to the language of what we do.” 74 TTABVUE 22:7-14. AMM has used the term in advertising across marketing channels “for well

over a decade”—since 2009. 74 TTABVUE 34:18-20, 32:25-33:9 (describing use on Instagram and Facebook and “on various bridal blogs” in addition to use in paid search engine advertising).

Since 2009, AMM has ordained hundreds of thousands of ministers through its website, nearly all of whom encountered the term while visiting AMM’s website. 74 TTABVUE 30:3-13; *see also* 74 TTABVUE 216 (Yoshioka Exhibit 26: a copy of theamm.org, showing the number of AMM ministers ordained as of August 20, 2020).

2. Other providers of ordination services use “get ordained” for the same goods and services claimed by Applicant.

Numerous other organizations providing and advertising ordination services use the phrase “get ordained” on their websites, in their website metadata, and to advertise their ordination services and related goods. *See* 69 TTABVUE 31:19-32:6. Such organizations include each of the following:

- Open Ministry (69 TTABVUE 248-49, 250-54; 74 TTABVUE 221, 223, 225; 40 TTABVUE 6-9);
- Church of the Latter-Day Dude (69 TTABVUE 255; 74 TTABVUE 229, 239);
- United National Ministry (69 TTABVUE 258-63, 264; 74 TTABVUE 235);
- Esoteric Theological Seminary (69 TTABVUE 265-68);
- Church of the Open Road (69 TTABVUE 269, 270; 74 TTABVUE 232, 237);
- Christian Leaders Institute (69 TTABVUE 271-77; 74 TTABVUE 226, 227);
- Reiki Temple (69 TTABVUE 278);
- First Nation Church (74 TTABVUE 230);
- Wanderlust Bay (74 TTABVUE 231);
- Minister Now (74 TTABVUE 233);
- Universal Ministries (74 TTABVUE 234);
- United Church of Bacon (74 TTABVUE 236); and
- Universal Life Church Seminary (43 TTABVUE 60-61).

AMM President Glen Yoshioka testified that “pretty much all of” the organizations he knows of that offer online ordinations use the phrase “get ordained” on their websites. 46 TTABVUE 2-8. “These other organizations use the phrase get ordained as we [i.e., AMM] do. It’s simply a generic call to action to describe the act of getting ordained or becoming ordained.”

74 TTABVUE 54:12-16. He added, “It’s virtually impossible to operate an organization that offers online ordinations without invoking the language get ordained.” 46 TTABVUE 2-8.

Yoshioka explained that he personally visited the websites of multiple other organizations that offer ordination services, read those organizations’ web copy, and performed searches within the websites for the phrase “get ordained.” 74 TTABVUE 48:8-49:19, 56:13-57:11. In addition to his general familiarity with the websites of these competitors gained over his many years of work in the industry, Yoshioka performed a special audit of the websites of ten different ordination providers between August 20 and September 4, 2020. 74 TTABVUE 56:13-58:3. In this audit, he found that all ten providers included the phrase “get ordained” on their websites. 74 TTABVUE 58:11-13. Moreover, six of the ten used the phrase “get ordained” in their website navigation bar. 74 TTABVUE 66:11-13. As Yoshioka explained, using the phrase in the website navigation bar meant that the phrase was “highly featured, important and prominent” on the site; by appearing in the navigation bar, the phrase likely “appears on every single public facing page of any given website.” 65 TTABVUE 65:7-20.

Yoshioka also presented evidence that other ordination providers use “get ordained” in metadata for their web content. *See, e.g.*, 74 TTABVUE 222 (Google search result showing that Open Ministry’s metadata includes use of “get ordained”); 74 TTABVUE 227 (same for Christian Leaders Institute). He further testified that other ordination providers use “get ordained” in their advertising, for instance via paid Google ads. 74 TTABVUE 219-20 (showing Google search results for “get ordained”); 74 TTABVUE 34:21-38:20; 74 TTABVUE 39-44 (describing use of “get ordained” by ministernow.org in paid advertising). Applicant’s former lead web developer, Wozeniak, confirmed this fact, testifying that he was “fairly sure” that

organizations besides Applicant and AMM bid on “get ordained” as an advertising keyword. 70 TTABVUE 28:9-15.

The service of ordaining ministers is not the only overlapping service provided by Applicant and other ordination organizations that use the phrase “get ordained”. Yoshioka testified that from his review of the websites of ordination providers besides Applicant and AMM, he saw that other organizations’ websites also provide information about the church or organization providing the ordination services. 74 TTABVUE 118:10-21; *compare to* 39 TTABVUE 24 (the Application, claiming mark for “providing a website featuring information about religious belief systems”). He additionally testified that other ordination providers sell goods like “marriage certificates, ordination certificates, other forms of ministerial credentials[,] and wedding accoutrements” through their websites. 74 TTABVUE 120:3-121:7; *see also* 74 TTABVUE 224 (OpenMinistry.com store page); *compare to* 39 TTABVUE 24 (the Application, claiming “on-line retail store services”).

3. Applicant itself uses “get ordained” in non-trademark ways, and its employees understand generic uses of the phrase.

In addition to providing services through GetOrdained.org, Applicant provides ordination services through its websites themonastery.org and ulc.org. 72 TTABVUE 31:22-25; 35:4-12. Applicant’s Operations Manager is unaware of any instance in which the GET ORDAINED logo appears on either of those websites. 72 TTABVUE 49:17-24. Yet the phrase “get ordained” appears or has historically appeared in generic fashion on both sites, including as follows:

- Goschie Deposition Exhibit A: Printout of themonastery.org dated 9/7/2020, including a video with the words “CONAN Gets Ordained Online” (72 TTABVUE 91), text saying “Those who get ordained with the Universal Life Church are empowered to take control of their own spiritual lives and do good in their own worlds” (72 TTABVUE 91), and text instructing “Get ordained online and become a minister today, we’d love to welcome you into our Universal family.” (72 TTABVUE 93)

- Goschie Deposition Exhibit C: Screenshot of ulc.org, including a button with text stating “Get Ordained Instantly” and other text saying “Get Ordained Online, Officiate a Wedding” (72 TTABVUE 100)
- Goschie Deposition Exhibit D: Wayback Machine screen capture of themonastery.org as it appeared on November 9, 2006, with text describing the Universal Life Church as “the only denomination in the world that . . . welcomes all who ask to get ordained and grants it without question.” (72 TTABVUE 105)
- AMM NOR Exhibit F: Screenshot of ulc.org page containing button titled “Get Ordained Instantly” and text reading “Get Ordained Online, Officiate a Wedding.” (43 TTABVUE 75)

Applicant also uses the phrase “get ordained” in generic or descriptive fashion in its paid Google advertisements for its ulc.org and themonastery.org websites. *See* 74 TTABVUE 219-20 (Yoshioka Exhibit 27: showing Google search results for “get ordained,” including paid advertisements for themonastery.org and ulc.org).

Generic, natural language uses of “get ordained” also appear and have historically appeared on GetOrdained.org:

- Goschie Deposition Exhibit B: Printout of GetOrdained.org dated 9/7/2020, including a header describing “How to Get Ordained and Perform a Wedding” (72 TTABVUE 95)
- Goschie Deposition Exhibit E: Wayback Machine screen capture of GetOrdained.org as it appeared on March 24, 2010, with a header reading “Get Ordained,” a button instructing “Get Ordained Online,” and text saying “As you get ordained online, we hope that your independent faith and journey will aid in changing the negatives of religion and all faiths.” (72 TTABVUE 106)
- Goschie Deposition Exhibit F: Wayback Machine screen capture of GetOrdained.org as it appeared July 10, 2011, including text instructing “Get Ordained Online” and section headers reading “How to Get Ordained Online,” “Get Ordained as a Christian,” and “Get Ordained to Marry People.” Under the heading “Performing a Marriage,” text informs the reader that the Universal Life Church “has made it possible for millions to ***get ordained*** and ***perform a marriage*** for friends and family.” (72 TTABVUE 107) (emphasis in original)
- Goschie Deposition Exhibit G: Wayback Machine screen capture of various webpages on the GetOrdained.org website as they appeared July 23, 2011, including text reading “it is possible for anyone to ***get ordained*** and give their loved ones the wedding of their dreams,” (72 TTABVUE 108) (emphasis in original), and section headers titled “How to Get Ordained Online” and “Get Ordained as a Christian.” (72 TTABVUE 108–11)

- Goschie Deposition Exhibit H: Wayback Machine screen capture of GetOrdained.org as it appeared on November 27, 2014, with instructions to “Get Ordained Today” (72 TTABVUE 112)
- Goschie Deposition Exhibit I: Wayback Machine screen capture of GetOrdained.org as it appeared on July 16, 2016, with the heading “Get Ordained Today” and the words “Looking to get ordained to become a minister?” (72 TTABVUE 113)
- AMM NOR Exhibit F: Printout of GetOrdained.org dated September 9, 2020 containing header titled “How to Get Ordained and Perform a Wedding.” (43 TTABVUE 62)

Additionally, even Applicant’s employees conceded that “get ordained” can be used generically in the context of ordination. Applicant’s President conceded at his discovery deposition that the phrase “get ordained” is “self-explanatory” and means “get ordained.” 79 TTABVUE 16:21-24. Though he testified that “[y]ou can get ordained to do other things” besides become a minister in a non-religious context (such as “[g]et[ting] ordained to join the forces”), he admitted that people “looking to become a minister” understand “get ordained” to mean “get[ting] ordained to become a minister.” 79 TTABVUE 17:25-18:10. Applicant’s Operations Manager also admitted that the phrase “get ordained” could be used generically to describe the legal process of becoming a minister, 72 TTABVUE 25:2-11, or the religious process of becoming a minister, 72 TTABVUE 25:12-20. He stated that “it’s all contextual” as to whether “get ordained” refers to more than just Applicant’s services. 72 TTABVUE 25:21-26:2.

Though Applicant’s witnesses carefully attempted to avoid using the phrase “get ordained” in non-trademark fashion in their trial testimony, they nevertheless demonstrated facility at understanding generic or descriptive use of the phrase. For instance, in response to the question “You know that it’s possible to get ordained through organizations besides ULCMS [i.e., Applicant], right?” Applicant’s Operations Manager responded, “There are other organizations through which one can become a minister, if that’s what you’re asking.” 72 TTABVUE 24:5-12; *see also* 70 TTABVUE 10:12-11:7 (Wozniak responding to questions

about whether people can “get ordained” through sites besides GetOrdained.org with the answer “They can become a minister, yes.”); 79 TTABVUE 13:9-14 (Freeman answering without confusion questions at his discovery deposition asking “When did you get ordained?” and “Where did you get ordained from?”).

Even despite Applicant’s careful efforts to avoid non-trademark use of the words “get ordained,” generic or descriptive uses still slipped out. Applicant’s President testified, for instance, “So if you have the urge to become ordained or get ordained or had a calling to become a minister, you could do that through that transaction of coming to us, asking, filling out the required information, and we endorse you as a certified member of our organization.” 86 TTABVUE 30:23-31:4; *see also* 86 TTABVUE 23:3-6 (Freeman: “If you want the service of being ordained, you can get the Post Office and say I would like to get ordained.”).

In sum, “get ordained” is routinely used by Applicant, Opposer, and many third-party ordination providers in generic fashion to refer to ordination.

G. Consumers of ordination services and the media use and understand “get ordained” generically rather than as a source identifier.

The record demonstrates that prospective and actual consumers of ordination services and members of the media also use “get ordained” generically in the context of ordaining ministers.

AMM’s former Executive Director Dylan Wall testified that the phrase “get ordained” is used generically, rather than as a source identifier, across forums and blogs in which people discuss or provide advice about ordination. 69 TTABVUE 28:15-29:4. For instance, in testifying about an article on the wedding planning website The Knot titled “How to Get Ordained and Officiate a Friend’s Wedding,” Wall explained that the article’s use of “get ordained” “describ[es] an action, a verb, something that an individual can do. And then, further, if you proceed to page 2, you’ll see an example – or you’ll see that they give examples of various

places you can go to get ordained.” 69 TTABVUE 42:12-43:3. The article does not use “get ordained” to refer to one particular source of ordination services (much less to refer specifically to Applicant’s goods and services) but rather provides information about possible sources of ordination services separate from its use of the phrase “get ordained.” 69 TTABVUE 230-34 (Wall Exhibit 1).

Wall testified about additional non-source-identifying uses of the term by third parties, as follows:

- Wall Exhibit 2: Excerpt from www.fromthisdayforward.net, in which an officiant describes her decision to “get ordained.” (69 TTABVUE 235)
- Wall Exhibit 3: GeekWire post by David Harbour promising that, “[p]rovided date works with s3 shooting schedule, I will get ordained and perform ceremony.” (69 TTABVUE 236)
- Wall Exhibit 4: Lincoln Journal Star article with the headline “Go online, get ordained.” (69 TTABVUE 237)
- Wall Exhibit 5: Screenshot of an article on a wedding blog explaining that “[a]lmost anyone can get ordained.” (69 TTABVUE 238)
- Wall Exhibit 6: Screenshot of a post on a wedding forum stating, “If we weren’t using officiants connected to our faiths, we would have had a friend or family member get ordained online.” (69 TTABVUE 239)
- Wall Exhibit 7: Screenshot of an article titled “The ‘Un’-official Officiant,” acknowledging the “million articles out there about . . . how to get ordained.” (69 TTABVUE 240)
- Wall Exhibit 8: Marketwired.com article noting that “28% of engaged couples ask a friend/family member to get ordained to marry them.” (69 TTABVUE 241)
- Wall Exhibit 9: Blog post explaining how to “get ordained and start preparing” to officiate a friend’s wedding. (69 TTABVUE 242)
- Wall Exhibit 10: Screenshot of articles on offbeatbride.com that contain the words “get ordained.” (69 TTABVUE 243)
- Wall Exhibit 11: Blog post asking for advice regarding a friend’s request to “get ordained.” (69 TTABVUE 244)

- Wall Exhibit 12: Post on a wedding forum advising couples to ask “a close friend or family member to get ordained.” (69 TTABVUE 245)
- Wall Exhibit 13: User comment on a wedding board stating that “we had a loved one get ordained to marry us” and asking “[w]hy would I want to pay some stranger . . . when my cousin could get ordained for free . . .?” (69 TTABVUE 246)
- Wall Exhibit 14: Article on weddingofficiants.com containing the heading “Get Ordained.” (69 TTABVUE 247)

Each of these examples uses the phrase “get ordained” in the context of the ordination of ministers, yet none reflect use of the phrase as a brand or as a source identifier for Applicant (or any other ordination services provider).

Wall further testified that he has seen hundreds of “examples of use of the term ‘get ordained’ by other online churches[,] in common conversation within blogs,” and in social media posts. 69 TTABVUE 34:9-15, 35:17-19, 36:7, 37:5-9, 37:16-21. Of these hundreds of examples, the only examples in which “get ordained” was used to refer to Applicant, or Applicant’s services, were in uses by Applicant. 69 TTABVUE 38:4-8.

AMM submitted through its Notice of Reliance the following additional examples of use of the phrase “get ordained” in the context of ordaining ministers and without reference to Applicant:

- AMM NOR Exhibit N: An article on vestoj.com that includes the line “One of my seminary classmates was a former tailor and she was about to get ordained as well.” (43 TTABVUE 321-32 at 325)
- AMM NOR Exhibit F: Search results showing excerpts of community posts on ulc.net forum containing the phrase “get ordained.” (43 TTABVUE 67-72)
- AMM NOR Exhibit D: Printout of comments on offbeatbride.com posts discussing getting ordained and individuals who have gotten ordained. (43 TTABVUE 2-46)
- AMM NOR Exhibits L and O: Washington Post article containing the phrase “Here I am, about to get ordained with my brothers.” (43 TTABVUE 312-14 at 313, 334)

- AMM NOR Exhibit M: Text of a speech containing the phrase “I’m Haydon, just pushing 30 . . . just about to get ordained as a deacon in the Church of England.” (43 TTABVUE 315- 320 at 316)
- AMM NOR Exhibit P: Article on The Knot titled “Wedding Ceremony: How Can Our Friend Get Ordained For Our Wedding?” and including the phrase “your friend will want to get ordained online or at the local county clerk’s office.” (43 TTABVUE 336)
- AMM NOR Exhibit Q: Article titled “How to Get Ordained to Marry – Everything You Need to Know” and containing section headers such as “How to Get Ordained to Marry” and “Get Ordained.” (43 TTABVUE 337-46 at 338, 339, 340)
- AMM NOR Exhibit R: Google Books search result showing the phrase “women who want to get ordained” in a collection of critical essays. (43 TTABVUE 348)
- AMM NOR Exhibit S: Article describing the process of getting ordained as a student minister. (43 TTABVUE 349-353)
- AMM NOR Exhibit T: Open Ministry article titled “A Quick How-to-Get Ordained Guide in 3 simple steps!” (43 TTABVUE 354-59)

These examples further illustrate that the phrase “get ordained” is not used by consumers or anyone connected to the ordination industry to refer to Applicant or Applicant’s goods or services.

AMM’s witnesses additionally presented testimony that prospective consumers of ordination services use the term when searching for and seeking out ordination services. As AMM’s President Glen Yoshioka stated, “when people[,] say[,] search for [‘]get ordained[’ through an online search engine] they’re seeking to get ordained, which means that they want to find a website where they can become a minister to get ordained through that website.” 74 TTABVUE 18:6-19:3.

The evidence shows that members of the public use the phrase to locate providers besides just Applicant. Wall testified, for example, that AMM discovered through evaluating incoming web traffic to its own site that many web visitors reach Opposer’s site by using “get ordained”—or variations thereof—as a web search term. 69 TTABVUE 26:17-25; 28:9-14, 148:11-149:8

(testifying that some web traffic to AMM’s website comes from searches for phrases such as “How do I get ordained?”).

AMM’s current Executive Director Lewis King engaged in in-depth analyses of searches for “get ordained” by members of the public. He testified that he uses a tool called Google Trends to understand “how people are searching for the phrase ‘get ordained’” when they perform such searches online. 73 TTABVUE 49:8-50:21, 54:12-25, 77:9-18. Based on his review of Google Trends data for “get ordained” as a search term, he understood that “most people were searching for ‘get ordained’ in the context of ‘get ordained online’ or ‘get ordained in’ and then a specific state, like California.” 73 TTABVUE 54:22-25. That is, individuals searching for the phrase “get ordained” on Google appear to use the phrase “as a verbal phrase in conjunction with information on either end of that verbal phrase to further clarify the context of that verbal phrase, such as [‘]how to get ordained[’] or [‘]where would you want to get ordained?[’] You get ordained online.” 73 TTABVUE 93:6-15. Nothing about individuals’ Google searches for “get ordained” indicates that the phrase is regarded as a brand or that individuals searching the phrase are trying to locate a particular organization. 73 TTABVUE 93:17-94:2.

The Google Trends evidence, and King’s interpretation of it, is corroborated by King’s testimony about his many conversations with individuals who have obtained ordination services. He explained that he regularly converses with people who have been ordained, and he frequently seeks to explore these individuals’ brand awareness in the context of online ordination. 73 TTABVUE 24:6-26:3. Based on these conversations, he testified that “there’s generally pretty low brand awareness of organizations operating in the online ordination – online-ordination ecosystem.” 73 TTABVUE 25:24-26:3. Instead, “[p]eople understand the phrase ‘get ordained’

to mean to act of receiving an ordination that allows them to do certain things that they want to do and being – becoming an ordained minister by the organization that is providing that ordination.” 73 TTABVUE 39:2-11. From his extensive experience working with prospective and actual ministers, King has “no reason to believe that [individuals who are seeking to get ordained] are seeking out a particular organization.” 73 TTABVUE 37:20-38:3. Applicant introduced no evidence to rebut this conclusion.

IV. EVIDENTIARY ISSUES

During the trial period, AMM presented considerable relevant evidence similar to other evidence that this Board routinely relies on as competent evidence about how a contemplated mark is used and understood. Applicant nevertheless raised numerous evidentiary objections throughout the trial period. These objections appear to fall into four primary categories.

First, Applicant objected to certain documents introduced at trial which were not produced during discovery. However, failure to produce does not preclude reliance on documents at trial where failure to disclose was substantially justified or is harmless. *Vignette Corp. v. Marino*, 77 U.S.P.Q.2d 1408, 1411 (T.T.A.B. Nov. 29, 2005); *Target Brands, Inc. v. IQA Products, LLC*, No. 91204357, 2014 WL 11030988, at *3 (T.T.A.B. Feb. 5, 2014) (non-precedential). Indeed, several cases hold that if a party discovers additional evidence in support of its case-in-chief, even after the close of its testimony period for offering such evidence, the “proper course” is to move to reopen its testimony period for the specific purpose of offering the new evidence. *Rowell Labs., Inc. v. Canada Packers Inc.*, 215 U.S.P.Q. (BNA) ¶ 523 (T.T.A.B. Sept. 10, 1982); *Chemetron Corp. v. Self-Org. Sys., Inc.*, 166 U.S.P.Q. (BNA) ¶ 495 (T.T.A.B. June 17, 1970) (“Since material of this type pertains to a party’s case-in-chief, the proper procedure for opposer to have followed was to move before the Board to reopen its testimony period for the specific purpose of introducing this ‘evidence.’”); *see also* TBMP § 509.01(b)(2).

Here, any purported failure to disclose such documents prior to trial was harmless, as all the documents, or the evidence contained within them, were available to Applicant in some fashion prior to trial. For instance, the exhibits introduced through Dylan Wall's trial deposition were previously introduced in support of a prior motion in this proceeding. *Compare* 69 TTABVUE 230-278 (King Exhibits 1-24) *to* 7 TTABVUE 5-46. Other documents are simply new versions of previously produced documents introduced to cure Applicant's concerns about the authenticity or completeness of the related produced document but which contain no substantive changes from the previous documents. Some documents used at trial were not in AMM's possession during discovery and so were not produced, but reflect information publicly available online. *E.g.*, 73 TTABVUE 145-148 (King Exhibits 47-49); 74 TTABVUE 216-248 (Yoshioka Exhibits 26-46). And some documents to which Applicant objected are screen captures of websites which Applicant itself operates. *See* 72 TTABVUE 34:4-35:19 (including Applicant's objections to an exhibit showing a page of Applicant's website ulc.org).

Moreover, AMM permissibly reserved its right to use additional documents at trial, especially of documents not in AMM's possession at time of production. 66 TTABVUE 128, ¶¶ 2, 4; *see also* 43 TTABVUE 97, ¶ 1 (Applicant reserving the same right to itself). Thus, Applicant's timing objections are not well founded and instead simply reflect Applicant's desire to avoid harmful evidence for which it has no substantive response.

Second, Applicant objected to the authenticity of certain documents introduced at trial. However, there is no legitimate reason to doubt the authenticity of any of the documents. For instance, Applicant objects to the authenticity of documents obtained from the Internet Archive Wayback Machine—while itself offering documents from the Wayback Machine. *See, e.g.* 65 TTABVUE 6-11 (Goschie Declaration Exhibits A and B). Further, as discussed above,

Applicant's prior completeness and authenticity objections were cured by subsequent production and testimony from AMM during trial.

Third, Applicant objected to a purported lack of foundation or lack of personal knowledge underlying certain witnesses' testimony on certain subjects—particularly regarding testimony from King, Yoshioka, and Wall. However, these objections were cured within the trial depositions themselves, as the witnesses laid the foundation for their extensive knowledge on various matters pertaining to the business of providing ordination services. King, Yoshioka, and Wall each have many years of experience in the ordination industry, including significant awareness of and contact with prospective and actual consumers, competitors in the industry, and third parties who write about the industry. *See supra* Section III.D.

Fourth, Applicant raised numerous hearsay objections to evidence concerning public exposure to and use of “get ordained.” Such objections are not well founded or grounds to exclude any testimony. *Int'l Dairy Foods Ass'n v. Interprofession du Gruyere*, No. 91232427, 2020 WL 4559436, at *4 (T.T.A.B. Aug. 5, 2020) (holding that hearsay objections to similar kinds of evidence presented on the issue of genericness are “baseless,” explaining that the Board does “not consider the evidence for the truth of any assertion made therein but only for public exposure to the term [at issue] used in a generic (or non-generic) manner.”); *see also Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 U.S.P.Q.2d 1419, 1428 (T.T.A.B. Jul. 9, 2014) (“[S]uch materials are frequently competent to show, on their face, matters relevant to trademark claims (such as public perception), regardless of whether the statements are true or false. Accordingly, they will not be excluded outright, but considered for what they show on their face.”). As with the evidence in *International Dairy Foods Association* and *Harry Winston, Inc.*, AMM's evidence of various public uses of “get ordained” is relevant and admissible

regardless of whether the content is literally true or false (if, indeed, it has any truth value at all) because it shows on its face generic or descriptive use of the phrase “get ordained”.

Ultimately, the Board need not rule on each of the hundreds of objections raised by Applicant at trial, as the Board can weigh the relevance and strength or weakness of all the evidence in the record. *Int’l Dairy Foods Ass’n*, No. 91232427, 2020 WL 4559436, at *8 (T.T.A.B. Aug. 5, 2020).

V. LEGAL ARGUMENT

A. AMM has standing to oppose registration of the GET ORDAINED mark.

A threshold issue in every case is the plaintiff’s standing to challenge registration of the claimed mark. Section 13 of the Lanham Act provides that “[a]ny person who believes that he would be damaged by the registration of a mark” may file an opposition. 15 U.S.C. § 1063. A belief in likely damage can be shown by establishing a direct commercial interest. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 U.S.P.Q.2d 1842, 1844 (Fed. Cir. 2000). AMM and Applicant are direct competitors in the ordination industry, and both currently use, and historically used, the claimed mark in connection with their services. *See supra* Section III.F.1.

AMM additionally introduced un rebutted evidence that it would be damaged if it were no longer permitted to use “get ordained” to describe its services. AMM’s Executive Director testified that if AMM was not permitted to use “get ordained,” the way that AMM communicates with prospective and actual consumers of its services would be dramatically altered. 73 TTABVue 95:22-101:6. Instead of using the direct and informal imperative “get ordained,” which invokes the language of state marriage statutes, *see supra* Section III.A, *see also* RCW 26.04.050 (referring to “ordained ministers”), AMM would be forced to substitute “more abstract, more complicated, less direct ways of referencing the same act of ordination and the imperative to engage in ordination.” 73 TTABVue 96:25-97:6, 96:7-13 (not being able to use

“get ordained” would “make it very challenging for [AMM] to talk about services that we provide and to accurately represent the service that we provide to individuals that take advantage of that service.”). AMM would also lose significant web traffic if it were unable to use “get ordained”, and it would consequently suffer lower revenue from the loss in traffic. 73 TTABVue 99:11-100:14, 102:17-103:18. AMM has therefore established its standing in this proceeding.

B. Registration must be refused so long as AMM proves by a preponderance of the evidence that GET ORDAINED is generic or merely descriptive for at least one of the claimed services.

It is a “well settled legal principle” that where a mark is generic or merely descriptive of one or more of the goods or services identified in a particular class, registration must be refused for that class in its entirety. *In re Analog Devices Inc.*, 6 U.S.P.Q.2d 1808 (T.T.A.B. Jan. 14, 1988). Thus, so long as AMM proves by a preponderance of the evidence that GET ORDAINED is generic, is merely descriptive, or fails to function as a trademark for at least one of the services in Class 45—e.g., the claimed service of “ordaining ministers to perform religious ceremonies”—registration must be refused for Class 45 in its entirety. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 U.S.P.Q.2d 1551, 1554 (Fed. Cir. 1991) (preponderance of the evidence standard).

C. GET ORDAINED is generic in the context of “ordaining ministers to perform religious ceremonies.”

“The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 U.S.P.Q. 528 (Fed. Cir. 1986). Making this determination involves a two-step inquiry: First,

what is the genus of the goods or services at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods or services? *Id.*

“[A] proper genericness inquiry focuses on the description of services set forth in the [application or] certificate of registration.” *Magic Wand Inc.*, 19 U.S.P.Q.2d at 1552. Applicant seeks to register GET ORDAINED for several genres of services, including ecclesiastical services—namely, getting individuals ordained as ministers—and online retail store services. *See* 39 TTABVUE 24; *see also* 65 TTABVUE 4-5, ¶ 16 (Goschie: noting that one of “the class or genus of services” provided by and claimed by Applicant “is commonly identified as ‘religious services,’ ‘church services,’ ‘ecclesiastical services,’ or ‘ordination services’”). Thus, there is no dispute that one genus of services at issue in this proceeding is ordination services.

The question, then, is whether the relevant public would understand GET ORDAINED to refer to ordination services. *In re 1800Mattress.com IP LLC*, 586 F.3d 1364, 92 U.S.P.Q.2d 1682, 1685 (Fed. Cir. 2009) (noting that it is not necessary to show that the relevant public uses the term, so long as the relevant public would understand the term to be generic). The “relevant public” in this case consists of ordinary consumers of ordination services. Competent sources of the relevant public’s understanding of the term include dictionary definitions; use in books, news stories, and other publications; Google search results; use by competitors; and generic use by the applicant itself. *In Re Hikari Sales USA, Inc.*, No. 86439012, 2019 WL 1453259, at *3 (T.T.A.B. Mar. 29, 2019); *Novak v. Overture Services, Inc.*, 309 F. Supp. 2d 446 (E.D.N.Y. Mar. 25, 2004); *see also USPTO v. Booking.com B.V.*, 140 S. Ct. 2298, 2307 n.6 (2020) (“dictionaries” and “usage by consumers and competitors” inform the inquiry into genericness). AMM presented evidence each of these types.

Where a mark is in the nature of a phrase, the Board must evaluate the meaning of the composite mark as a whole. *In Re Wm. B. Coleman Co., Inc.*, 93 U.S.P.Q.2d 2019 (T.T.A.B. Mar. 4, 2010). Here, both parties presented dictionary definitions of the constituent parts of “get ordained”. As discussed above in Section III.A, the dictionary definitions establish that “get ordained” literally means “obtain ordination credentials” or “become a minister.” Other evidence in the record further establishes that “get ordained,” considered as a whole, lacks any source-identifying capability. *See supra* Section III.A, III.F, III.G.

For instance, ordination providers routinely use “get ordained” in conjunction with offering their own ordination services. *E.g.*, 74 TTABVUE 121:12-17 (AMM); 74 TTABVUE 224 (Open Ministry); 74 TTABVUE 232, 237 (Church of the Open Road); 74 TTABVUE 235 (United National Ministry). Use of the claimed mark in a generic manner by an applicant’s competitors is relevant evidence in support of a finding that the mark is generic. *See In Re Active Ankle Sys., Inc.*, 83 U.S.P.Q.2d 1532 (T.T.A.B. Apr. 17, 2007).

Additionally, generic use of a mark by the holder of that mark “is strong evidence of genericness.” *Retail Servs., Inc. v. Freebies Publ’g*, 364 F.3d 535, 545, 70 U.S.P.Q.2d 1603 (4th Cir. 2004) (citing 2 McCarthy § 12:13). Applicant itself uses “get ordained” as a generic verbal phrase (i.e., to mean “become ordained,” “obtain ordination credentials,” or “become a minister”) on its websites. *E.g.*, 72 TTABVUE 91-113 (Goschie Deposition Exhibits A-F); 43 TTABVUE 62, 75; *see also supra* Section III.F.3 (showing that Applicant’s employees understand “get ordained” to mean “become a minister”). Rather than relying on “get ordained” to be independently source-identifying, Applicant provides additional content to indicate the source of ordination services. *E.g.*, 65 TTABVUE 7-8 (Goschie Declaration Exhibit A: GetOrdained.org ordination form, clearly specifying that ordination is with “the Universal Life

Church Ministry”); 65 TTABVUE 10-11 (Goschie Declaration Exhibit B: GetOrdained.org webpage, noting that “ordinations are processed by Universal Life Church Ministries”).

AMM also presented evidence of generic use in a variety of different publications, including wedding blogs and articles by or for individuals interested in ordination services. *See supra* Section III.G.

Finally, AMM presented evidence that the relevant public uses “get ordained” as an online search term to find ordination providers besides just Applicant. *See supra* Section III.G. The search term “get ordained” and variations thereof (e.g., “get ordained online,” “how to get ordained”) routinely drive web traffic—and consumers of AMM’s ordination services—to AMM’s website. 73 TTABVUE 103:3-8. Given that other ordination providers also use “get ordained” in their own metadata and advertising, these providers presumably also receive web traffic from consumers who use and understand “get ordained” in a manner that does not inherently identify Applicant as a source. *E.g.*, 74 TTABVUE 36:15-38:20.

Applicant’s witnesses make much of the fact that “get ordained” is not the literal name of ordination services. *See* 65 TTABVUE 5, ¶ 16 (Goschie: “I cannot recall ever having heard anyone use the words “get ordained” to identify [a] class or genus of goods of service.”); 62 TTABVUE 4, ¶ 12 (Freeman: “I . . . have never heard anyone refer to “get ordained” or “get ordained services” as a common or generic term for any class or category of services.”). However, whether the term is identical to the “genus” or “category of services” is not the legal standard at issue. “Marks may not equate to the literal name of the goods or services for which registration is sought, but still be deemed to be ‘generic’ or otherwise incapable of attaining source significance and thus unregistrable.” *In Re Wm. B. Coleman Co., Inc.*, 93 U.S.P.Q.2d 2019 (T.T.A.B. Mar. 4, 2010) (citing cases). Just because ordination services are not literally referred

to as “get ordained services,” or identified that way on as the class on the trademark application, does not make the phrase protectable for its generic definition.

In sum, the evidence shows that the relevant public does not readily perceive the phrase “get ordained,” in and of itself, as source indicating, and is more likely to rely on other matter as indicating source. *See In Re Active Ankle Sys., Inc.*, 83 U.S.P.Q.2d 1532 (T.T.A.B. Apr. 17, 2007). Accordingly, GET ORDAINED is generic.

D. Alternatively, GET ORDAINED is merely descriptive in the context of ordaining ministers.

If not generic, GET ORDAINED is, at best, merely descriptive in the context of ordination services. “A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 U.S.P.Q.2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 U.S.P.Q.2d 1828, 1831 (Fed. Cir. 2007)). A descriptive, and therefore unregistrable, mark (absent a showing of secondary meaning), is to be contrasted with a suggestive mark, which is registrable. A suggestive mark “requires imagination, thought and perception to reach a conclusion as to the nature of the goods,” while a merely descriptive mark ‘forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods.’” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1252, 103 U.S.P.Q.2d 1753 (Fed. Cir. 2012). Where “an entirely unimaginative, literal-minded person would understand the significance of the reference,” a mark is descriptive rather than suggestive. *Nautilus Grp., Inc. v. ICON Health & Fitness, Inc.*, 372 F.3d 1330, 1341, 71 U.S.P.Q.2d 1173 (Fed. Cir. 2004) (quoting *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1142, 61 U.S.P.Q.2d 1705 (9th Cir. 2002)).

The phrase “get ordained” immediately conveys information about a feature or characteristic of one of the designated services in Applicant’s application. *See In re Chamber of Commerce*, 675 F.3d at 1301 (describing the test for descriptiveness). Specifically, it immediately conveys the availability of the service of ordination: the fact that the consumer can—quite literally—get ordained.

Given the common meanings of the words “get” and “ordain,” no imagination or multi-stage reasoning is required to connect “get ordained” to a service that enables consumers to become ordained ministers. To the contrary, imagination would only be needed to connect some other service to the phrase. In this way, the GET ORDAINED mark is very similar to the unprotectable mark RESERVE IT, which an applicant sought to register for a software allowing consumers to make dining reservations. A court evaluating that mark concluded that “an entirely unimaginative, literal-minded person would understand . . . the explanation that RESERVE IT is software that enables consumers to make dining reservations.” *Reserve Media, Inc. v. Efficient Frontiers, Inc.*, No. CV1505072DDPAGRX, 2017 WL 123420, at *4 (C.D. Cal. Jan. 11, 2017). The mark was therefore held to “define qualities or characteristics of [the] product in a straightforward way,” and was not protectable as a trademark. *Id.* (quoting *Kendall-Jackson Winery v. E.J. Gallo Winery*, 150 F.3d 1042, 1047 n.8, 47 U.S.P.Q.2d 1332 (9th Cir. 1988)).

GET ORDAINED, in the context of ordaining ministers, requires as little imagination to understand as RESERVE IT does in the context of making dining reservations. A “literal-minded person” encountering these calls to action would immediately understand, in the given context, the meaning of the phrase in that context; one describes obtaining the ordination services being provided, the other describes obtaining the reservation services being provided. If anything, GET ORDAINED is even more egregiously descriptive than RESERVE IT, because RESERVE IT

could refer to reservations other than restaurant reservations (e.g., hotel reservations), and because direct synonyms exist for “reserve it” (e.g., “book it”), but there are no such multiple meanings or available synonyms for “ordained.”

Other competent evidence of record also supports the conclusion that the phrase “get ordained” is merely descriptive to the relevant public. *See In re Bayer Aktiengesellschaft*, 488 F.3d at 964 (competent sources include dictionary definitions, trade journals, newspapers, webpages, story excerpts, and other publications). *E.g.*, 73 TTABVUE 146-148 (Google Trends spreadsheet showing common related search results by individuals searching the phrase “get ordained”); 74 TTABVUE 219-220 (Google search results showing the top hits for “get ordained,” including non-trademark uses by Applicant, by AMM, by other ordination providers, and in online articles); *supra* Section III.G (identifying numerous publications, news articles, blog posts, and article excerpts that include the phrase “get ordained”).

Yet another measure of a mark’s descriptiveness is “use by competitors of the same term.” *Nautilus Grp., Inc.*, 372 F.3d at 1341 (quoting *Entrepreneur Media*, 279 F.3d at 1143). “[E]xtensive third-party use of a mark might tend to show that consumers are likely to associate the mark with companies and meanings other than the markholder’s.” *Id.* (quoting *Playboy Enters. v. Netscape Communs. Corp.*, 354 F.3d 1020, 1027 n.33, 69 U.S.P.Q.2d 1417 (9th Cir. 2004)). The evidence of record demonstrates that competitors routinely and extensively use “get ordained” in conjunction with their own ordination services. *See supra* Section III.F.2. This evidence further undermines Applicant’s unsupported argument that consumers associate the mark with Applicant.

In sum, even if GET ORDAINED is not generic for ordination services, it is merely descriptive, and thus incapable of registration as a trademark.

E. GET ORDAINED has not acquired secondary meaning as a trademark.

Applicant did not seek to register its mark under Section 2(f) of the Lanham Act on the grounds of acquired secondary meaning, 39 TTABVUE 22, it did not assert acquired distinctiveness as an affirmative defense in this proceeding, 4 TTABVUE 6, and it did not present evidence to support a finding that GET ORDAINED has acquired distinctiveness under Section 2(f). The record plainly demonstrates that Applicant's use of the phrase has not been substantially exclusive; to the contrary, numerous other organizations that offer similar or identical goods and services also use the phrase. Accordingly, Applicant is not entitled to registration on the basis of acquired distinctiveness.

To the extent Applicant now asserts distinctiveness on the basis of secondary meaning (despite not having done so in the Application or Opposition pleadings),² Applicant bears the burden of proving that GET ORDAINED has acquired distinctiveness. *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 1335, 116 U.S.P.Q.2d 1262 (Fed. Cir. 2015) (citing *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 U.S.P.Q.2d 1420 (Fed. Cir. 2005)). "[T]he greater the degree of descriptiveness the term has, the heavier the burden to prove it has attained secondary meaning." *In re Boston Beer Co.*, 198 F.3d 1370, 1373, 53 U.S.P.Q.2d 1056 (Fed. Cir. 1999). Applicant does not meet its burden.

None of Applicant's witnesses have personal knowledge of how the relevant public understands the phrase "get ordained." Applicant's President testified that he has never spoken

² AMM realizes the Board addressed stated in its summary judgment order that acquired distinctiveness may properly be treated as a pending claim in this proceeding. *See* 36 TTABVUE 11 n.8. Nonetheless, Ammt restates its objections to preserve its rights on appeal. Applicant never asserted this claim—on which it would have borne the burden of proof—in either the Application or as an affirmative defense in this opposition proceeding; AMM accordingly did not take discovery on the issue. Applicant's failure to affirmatively assert acquired distinctiveness should preclude registration on the basis of acquired distinctiveness. Nevertheless, in light of the Board's prior holding, AMM addresses the issue.

with anyone outside of his depositions in the case about how the phrase “get ordained” is understood. 86 TTABVUE 34:6-35:2. And Applicant’s Operations Manager could not recall whether he has ever seen AMM or any other competitor or third party use the phrase “get ordained.” 85 TTABVUE 16:3-18; *see also* 85 TTABVUE 12:14-22 (Goschie: admitting that although he heard Applicant’s telephone operators use GET ORDAINED as a trademark, he did not hear customers’ responses); 86 TTABVUE 7:19-8:15 (Freeman: admitting that he is unaware of whether any organization besides Applicant, AMM, and the original Universal Life Church use the phrase “get ordained”). Thus, in contrast to AMM’s witnesses, each of whom has extensive awareness of third party uses of “get ordained” in the context of ordaining ministers, Applicant’s witnesses’ knowledge is limited myopically to Applicant’s own self-serving uses of the phrase.

Moreover, Applicant offered no other evidence sufficient to demonstrate how prospective and actual consumers understand or use “get ordained”—whether through a secondary meaning expert, a consumer survey, or any other evidence showing use of the phrase by third parties. *See generally* 66 TTABVUE 1-192; *see also* 72 TTABVUE 23:19-22 (Goschie: unable to recall whether Applicant ever engaged a third party to look into how customers perceive GET ORDAINED); 85 TTABVUE 18:9-25 (Goschie: admitting that he has never asked a prospective minister about how she understands “get ordained”); 84 TTABVUE 17:20-23 (Wozeniak: admitting that he did not speak with any ministers ordained through the GetOrdained.org site in preparation for his testimony).

Meanwhile, Applicant’s testimony that it has “continuously” and “prominently” used the phrase “get ordained” since at least 2011, *see* 62 TTABVUE 2-3, ¶¶7-9, does not establish acquired distinctiveness due to the considerable other evidence of record that other organizations

use the same phrase equally in conjunction with their own ordination services. After all, continuous use, even coupled with significant sales and advertising expenditures, is not enough to satisfy Section 2(f) where an applicant's use is not "substantially exclusive" and source-identifying. *Levi Strauss & Co. v. Genesco, Inc.*, 222 U.S.P.Q. 939, 940-41 (Fed. Cir. 1984) ("When the record shows that purchasers are confronted with more than one (let alone numerous) independent users of a term or device, an application for registration under Section 2(f) cannot be successful, for distinctiveness on which purchasers may rely is lacking under such circumstances."); *see also Target Brands, Inc. v. Hughes*, 85 U.S.P.Q.2d 1676 (T.T.A.B. 2007) (an applicant's use is not "substantially exclusive" when many other competitive sellers in the market use the same designation).

While Applicant may indeed have "continuously and prominently displayed the GET ORDAINED logo in the header of the home page, and every sub-page, of the GetOrdained.org website, since at least 2011," 62 TTABVUE 3, ¶ 9, it has not "exclusively" used the term. The evidence shows that AMM has displayed the words "get ordained" prominently across its website (theamm.org) since 2009—two years earlier than Applicant. 74 TTABVUE 29:23-30:2. The evidence further shows that at least six third-party ordination providers use the phrase "get ordained" in their website navigation panels, such that the phrase appears on the home page and each sub-page of those providers' websites—just as it does on GetOrdained.org. 74 TTABVUE 65:4-66:13.

Applicant's evidence that it ordains ministers while trying to use GET ORDAINED as a brand also fails to establish that "get ordained" is understood by ministers or prospective ministers as a brand in light of the evidence that multiple organizations use the phrase "get ordained" in conjunction with ordaining ministers. In fact, the record shows that AMM has

consistently ordained more ministers through its website than Applicant ordained through the GetOrdained.org site. *Compare* 72 TTABVUE 54:14-20 (ministers ordained by Applicant via GetOrdained.org between January 1, 2014 and October 30, 2019) *to* 73 TTABVUE 44:22-45:8 (ministers ordained by AMM during the same period); *compare* 63 TTABVUE ___, ¶ 25 (ministers ordained via GetOrdained.org between January 1, 2014 and December 3, 2020) *to* 73 TTABVUE 42:16-43:4, 46:22-48:15 (ministers ordained by AMM as of September 2020). Further, a third-party ordination provider, the Church of the Latter-Day Dude, which, like Applicant and AMM, features the phrase “get ordained” on its website, reports that it has ordained “over 450,000” individuals as Dudeist priests. 69 TTABVUE 255. This evidence, therefore, demonstrates nothing more than the popularity of ordination services; it does not establish that “get ordained” is source-identifying.

Applicant’s sales figures also do not establish acquired distinctiveness. *See Target Brands, Inc.*, 85 U.S.P.Q.2d at *6. The record shows that other ordination providers, including but not limited to AMM, sell goods through webpages which prominently feature the phrase “get ordained.” *E.g.*, 74 TTABVUE 121:12-17 (AMM); 74 TTABVUE 224 (Open Ministry); 74 TTABVUE 232, 237 (Church of the Open Road); 74 TTABVUE 235 (United National Ministry).

Further, Applicant’s evidence regarding its advertising efforts falls short of proving any actual impact on consumer perception. *See In Re Hikari Sales USA, Inc.*, No. 86439012, 2019 WL 1453259, at *20 (Mar. 29, 2019). There is inadequate information in the record for the Board to gauge whether Applicant’s expenditures are significant in the industry and how much of Applicant’s advertising expenditures may properly be allocated to GET ORDAINED as opposed to other designations used by Applicant (including “UNIVERSAL LIFE CHURCH”).

Moreover, Applicant's use of GET ORDAINED in advertising is also far from exclusive. AMM and other ordination providers advertise using the phrase "get ordained." *See supra* Sections III.F.1, III.F.2.

In short, Applicant's evidence suggests only some efforts made to acquire distinctiveness, but do not demonstrate that the efforts have borne fruit. *See Target Brands, Inc.*, 85 U.S.P.Q.2d at *6; *In Re Hikari Sales USA, Inc.*, 2019 WL 1453259, at *20. No evidence of record shows that the phrase "get ordained" is any more likely to be understood by the relevant public to identify Applicant as to identify any other provider of online ordination services.

F. Applicant cannot show that the words "get ordained" function as a trademark, especially in light of confounding variables weighing on Applicant's evidence of trademark strength.

Beyond the above issues, the evidence also shows that Applicant does not use GET ORDAINED as a word mark, but rather as a stylized logo containing multiple other elements. All of the evidence Applicant introduced into the record regarding its use shows that it uses the phrase as part of a stylized logo that also includes the words "UNIVERSAL LIFE CHURCH"—the words which actually act as the source identifier.³

As Applicant's Chief Technology Officer testified, the "GET ORDAINED trademark" under which Applicant's services and sales are provided consists of "the logo . . . image . . . that we have on our website." 84 TTABVUE 14:12-22. Applicant's Operations Manager confirmed this, explaining that his declaration testimony that Applicant "continuously and prominently used the 'get ordained' trademark" across the GetOrdained.org website referred to Applicant's display

³ Applicant uses a non-stylized version of the words "get ordained" in combination with a trademark symbol on some of its GetOrdained.org webpages, but the stylized logo and other source-identifying information also appear prominently on these pages. *See, e.g.*, 65 TTABVUE 10-11. Applicant's use of a trademark symbol in conjunction with its non-logo use of "get ordained" does not suffice to convert the words into a trademark. *See In re Crystal Geyser Water Co.*, 85 U.S.P.Q.2d 1374, 1379 n.4 (T.T.A.B. May 31, 2007) ("We further note that use of the TM designation does not in itself elevate descriptive matter to a trademark").

of the mark “in the header of every page on the site”—*i.e.*, to Applicant’s stylized logo including the words “UNIVERSAL LIFE CHURCH.” 85 TTABVUE 9:3-14. *See also* 65 TTABVUE 6-11 (Goschie Declaration Exhibits A and B, showing use of the image containing GET ORDAINED and UNIVERSAL LIFE CHURCH in stylized text on webpages from 2014 and 2017); 62 TTABVUE 6-9 (Freeman Declaration Exhibits A and B, showing the logo used on the GetOrdained.org site from 2011-2014 and the one used from 2014-present, both including a design and the words “UNIVERSAL LIFE CHURCH”). Goschie also testified that Applicant’s brand “dba Universal Life Church Ministries” appears on every webpage on the GetOrdained.org website. 72 TTABVUE 56:13-16.

In other words, Applicant cannot separate out the words “GET ORDAINED” from other significant source identifying components of Applicant’s logo: its design and its inclusion of the words “UNIVERSAL LIFE CHURCH.” As Applicant’s logo appears so prominently on Applicant’s GetOrdained.org website, and has been in use since 2014, *see* 65 TTABVUE 7, all of Applicant’s evidence regarding ministers ordained via that site and sales made via that site is tainted by the presence of the logo. It is impossible to tease apart Applicant’s use of GET ORDAINED from its use of a stylized design and the words UNIVERSAL LIFE CHURCH.

G. Registration of GET ORDAINED would impermissibly remove the term from the common lexicon.

Even if Applicant could show that consumers associated GET ORDAINED with Applicant (which it has not), Applicant is not allowed to remove ordinary words from the common lexicon. *In Re Wal-Mart Stores, Inc.*, No. 86261962, 2019 WL 193990, at *12 (T.T.A.B. Jan. 11, 2019); *In Re World Library Publications, Inc.*, 198 U.S.P.Q. (BNA) ¶ 442 (T.T.A.B. Feb. 22, 1978). “Get ordained” is, in the context of ordaining ministers, ordinary and essential language. *See* 74 TTABVUE 20:15-21:4, 32:3-9 (Yoshioka: “It’s an unavoidable

phrase . . . especially in our line of work.”; “It means to get ordained, so a synonym would be become ordained or apply for an ordination. Get ordained is a simple way of framing them, which basically means to receive an honorific or title from a religious institution.”; “[W]hat we do is quite esoteric and there’s not a lot of ways in language to get people to find us and to seek ordination through us. Get ordained is really the most generic and efficient way of communicating that.”); *see also supra* Section III.G (describing how the public uses and understands “get ordained”).The word “ordained” has no direct synonym, and that exact word appears in state statutes addressing the authority that ordination confers. RCW 26.04.050; *see also* 73 TTABVUE 28:4-11. Yet Applicant did not disclaim the word in its Application. The presumption of exclusive right to use which would arise from registration of GET ORDAINED would harm ordination providers and the public by impeding their ability to communicate with and reach each other using ordinary and essential language in the context of ordination.

H. The fact that the PTO registered other “GET ____” marks does not make GET ORDAINED protectable.

Applicant’s examples of registered marks that include the word “GET” fail to demonstrate that the term GET ORDAINED is distinctive. *See* 66 TTABVUE 53-109. Evidence showing third-party registrations of other common phrases is of “scant probative value” on the specific issue of registrability in a different case. *In Re Volvo Cars of N. Am. Inc.*, 46 U.S.P.Q.2d 1455 n. 2 (T.T.A.B. June 3, 1998).

“The Board must decide each case on its own merits.” *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342, 57 U.S.P.Q.2d 1564 (Fed. Cir. 2001). The propriety of the issuance of other registrations is not before the Board, and the Board is in no way bound by the PTO’s allowance of prior registrations bearing some characteristics similar to the application at issue. *Id.* (finding little persuasive value in the registrations submitted by Applicant); *In Re Volvo Cars of N. Am.*

Inc., 46 U.S.P.Q.2d 1455 n. 2 (T.T.A.B. 1998). The issue, therefore, is not whether the word “get” can be distinctive in other cases, but rather whether Applicant’s specific use is distinctive. The evidence in this case plainly shows that Applicant’s use is not distinctive in the context of ordaining ministers.

VI. CONCLUSION

Simply stated, Applicant’s trademark application for GET ORDAINED tries to claim too much. For ecclesiastical services that include “ordaining ministers,” the words “get ordained” require no imagination to immediately convey the nature of the services in question: getting someone ordained. Nothing about the phrase distinguishes Applicant’s services from the same ecclesiastical service of ordaining ministers that numerous other organizations provide. Accordingly, GET ORDAINED is not entitled to protection as a trademark, and Applicant’s application must be denied.

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2021, I served the foregoing Opposer's Trial Brief by emailing to Applicant as follows:

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